

19
IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 5TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE G.C. BHARUKA

WRIT PETITION NO. 25793/96

BETWEEN:

Narayan Swamy, G.V.,
No. 14351855 (Ex) Gunner (GD),
s/o. Venkataswamy,
Village & PO Dodganjoor,
Chintamani, Kolar Dist.,
Kolar.

304

..PETITIONER

(By Sri V.K.K. Nair, Adv.)

AND:

1. Union of India,
by Secretary,
Ministry of Defence,
Government of India,
DHQ PO, New Delhi-11.
2. Chief of the Army Staff,
Army Headquarters,
DHQ PO, New Delhi-11.
3. Officer-in-charge,
Artillery Records,
Nasik Road Camp,
Maharashtra-422 102.
4. Commanding Officer,
96 Field Regiment,
c/o. 99 A P O.

.. RESPONDENTS

(By Sri Ashok Harnahalli, Sr.C.G.S.C.)

This writ petition is filed under Article 226 of the Constitution praying this Court to quash Annexure-A dated 26.8.94 passed by R-3 and to direct R1 to 3 to reinstate the petitioner into service from 1.3.95 without any break in service and granting all consequential service benefits including financial benefits, after adjusting where necessary payment already made to the petitioner pursuant to the said illegal order of discharge.

This petition coming on for final hearing this day, the Court made the following:

305

ORDER

This writ petition is directed against the order No.469/LMC/CUO/Fd/51/Adm(Rel-4) dated 26.8.1994 issued by the third respondent. Acting on the said order of the third respondent the fourth respondent, Officer Commanding petitioner's unit, has discharged the petitioner from services.

2. Sri Ashok Harnahalli, Sr. Central Government Standing Counsel appearing for respondents, has raised a preliminary objection questioning the jurisdiction of this Court to entertain the present writ petition in view of Article 226(2) of the Constitution, which reads as follows:

"Article 226(2): The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

3. In the present case it is not disputed that the petitioner at the material time was deployed in 96 Field Regiment unit in operational area in Jammu & Kashmir. The impugned order of ~~the~~ discharge was passed by third respondent at Pune. It was served on the petitioner ~~at~~ the territory of Jammu & Kashmir. In
pursuant to that he was discharged in Jammu & Kashmir on

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306

3.1.1995. Therefore admittedly no part of cause of action had arisen within the territorial jurisdiction of this High Court. The mere fact that the petitioner is a resident of this State is of no consequence for determining the jurisdiction of this Court under Article 226(2) of the Constitution. In the case of TRISHALA SHOES (PVT.) LTD. -vs- UNION OF INDIA & OTHERS [1991(1) Kar.L.J. 294] this Court on a consideration of judgments of various courts and that of the Supreme Court in the case of STATE OF RAJASTHAN & ORS. -vs- M/S.SWAIKA PROPERTIES & ANR.(AIR 1985 SC 1289) has held that:

" The fact that the petitioner-Company is located within this State has no relevancy at all to constitute 'cause of action' to challenge the levy of customs duty at Bombay. The 'cause of action' arose entirely outside Karnataka. The preliminary objection raised by the learned counsel for the Central Government has to be accepted"

The Supreme Court has reiterated the same view in the case of OIL & NATURAL GAS COMMISSION -vs- UTPAL KUMAR BASU & ORS.[1994(4)SCC 711]. In this case it was held that only because respondent before the Supreme Court read advertisement at Calcutta and submitted offer from Calcutta and made representations from Calcutta, would not constitute facts forming an integral part of cause of action. In para 12 of the judgment their Lordships have recorded a mark of caution for the High Courts by observing that:

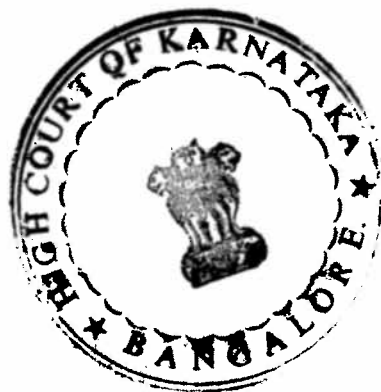
307

- 4 -

"...It must be remembered that the image and prestige of a Court depends on how the members of that institution conduct themselves. If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

4. For the aforesaid reasons in my opinion since no part of cause of action has arisen in the territorial jurisdiction of this Court, therefore the present writ petition is liable to be dismissed on the ground of lack of jurisdiction. It is accordingly dismissed.

sgs/



Sd/-
JUDGE